Editor's note: 87 I.D. 110

CHEYENNE RESOURCES, INC.

IBLA 79-547 Decided March 27, 1980

Appeal from decision of the Wyoming State Office, Bureau of Land Management, rejecting simultaneous oil and gas lease offer W 68690.

Affirmed.

1. Oil and Gas Leases: Applications: Generally Oil and Gas Leases: First-Qualified Applicant

   An oil and gas lease offer filed in the name of a corporation in a simultaneous filing is properly rejected where it is not accompanied either by corporate qualification papers or by any reference to a serial number where such information might be found, as required by 43 CFR 3102.4-1. Such omissions cannot be cured after the drawing.

2. Administrative Procedure: Hearings -- Hearings -- Oil and Gas Leases: Applications: Generally -- Rules of Practice: Hearings

   Where a corporate simultaneous oil and gas lease offeror alleges no facts which could disprove its failure to comply with 43 CFR 3102.4-1, no hearing will be granted as requested.

3. Administrative Procedure: Decisions -- Board of Land Appeals

   As precedents, decisions of the Board of Land Appeals should be cited by the volume and page number given on the bottom of the page of the decision and not to the IBLA docket number shown on the top of the decision.

4. Administrative Practice -- Administrative Procedure: Decisions -- Board of Land Appeals -- Bureau of Land Management

   Decisions of the Interior Board of Land Appeals are indexed, digested, and available for public inspection pursuant to published Departmental regulations. They meet the requirements of the Administrative Procedure Act and serve as binding Departmental precedents. However, adjudicative decisions by local Bureau of Land Management offices do not meet requirements of the Administrative Procedure Act and are not binding precedents.

APPEARANCES: Robert R. Spatz, President, Cheyenne Resources, Inc.

OPINION BY ADMINISTRATIVE JUDGE THOMPSON

Cheyenne Resources, Inc., appealed from the July 27, 1979, decision of the Wyoming State Office, Bureau of Land Management (BLM), which rejected its simultaneous oil and gas lease offer W 68690 for Parcel No. 1696 of the June 1979 list. The offer was filed in a simultaneous drawing procedure held pursuant to 43 CFR Subpart 3112. BLM rejected this drawing entry card offer, executed on behalf of

Cheyenne Resources, Inc., because it was accompanied neither by evidence of corporate qualifications nor by any reference to a previously filed statement of corporate qualifications.

Appellant argues primarily that shortly after the drawing it referred BLM to its corporate qualifications on file; that rejection contradicts 43 CFR 3112.5; that BLM's cited authority, a Board decision, is "unpublished, unindexed and unpromulgated"; and that the rejection is arbitrary and capricious. Appellant also requests a hearing on various matters, including BLM guidelines, procedures, and regulations relating both to simultaneous and competitive oil and gas lease offers.

The determinative question in this case is whether appellant's offer complied with regulation 43 CFR 3102.4-1 which specifies in pertinent part:

> If the offeror is a corporation, the offer must be accompanied by a statement showing * * * (b) that it is authorized to hold oil and gas leases and that the officer executing the lease is authorized to act on behalf of the corporation in such matters, * * *. Where such material has previously been filed a reference by serial number to the record in which it has been filed, together with a statement as to any amendments will be accepted. [Emphasis supplied.]

[1] The Board has held repeatedly that this regulation is mandatory. Corporate offers which lack corporate qualification papers or

the reference to previous filings must be rejected, Anchors & Holes, Inc., 33 IBLA 339 (1978); Dal Metro Investment Co., 29 IBLA 198 (1977), and cases cited. Appellant left blank that space on its drawing entry card which called for the serial number of the record of any previously filed corporate qualifications. Under the simultaneous drawing procedures, an oil and gas lease must be issued to the first-qualified applicant. 43 CFR 3112.4-1 and .5-1. "The Secretary is bound by his own regulation so long as it remains in effect. He is also bound * * * to treat alike all violators of his regulation." McKay v. Wahlenmaier, 226 F.2d 35, 43 (D.C. Cir. 1955). Because of its omission, appellant was not the first-qualified offeror.

A first-drawn simultaneous drawing entry card, defective for noncompliance with 43 CFR 3102.4-1, cannot be cured by submission of additional information after the drawing. Don C. Bell II, Trustee, 42 IBLA 21 (1979). Giving an unqualified first-drawn entrant additional time to file infringes on the rights of the second-drawn offeror. Ballard E. Spencer Trust, Inc. v. Morton, 544 F.2d 1067 (10th Cir. 1976), aff'g, Ballard E. Spencer Trust, Inc., 18 IBLA 25 (1974). Thus, appellant's attempts to remedy the omission after the drawing could not cure the defect which required rejection.

Competitive leasing differs from simultaneous oil and gas leasing in that certain minor defects can be cured after the high bidder is chosen. The essential element of a simultaneous, noncompetitive lease

offer is determination of the first-qualified offeror, whereas the amount bid is the determinative factor in the competitive leasing scheme. Alaska Oil and Minerals Corporation, 29 IBLA 224, 231, 84 I.D. 114, 118, n.1 (1977); Ballard E. Spencer Trust, Inc., supra. In competitive leasing, there is no second drawee whose rights would be infringed by cure of minor defects.

[2] Appellant requests a hearing. For the Board of Land Appeals to grant a hearing, in exercise of its discretion under 43 CFR 4.415, the appellant must allege facts which, if proved, would entitle it to the relief sought. Foote Mineral Co., 34 IBLA 285, 85 I.D. 171 (1978); Rodney Rolfe, 25 IBLA 331, 83 I.D. 269 (1976). Here, the appellant has alleged no fact which, if proved, would compel a different legal conclusion. As we noted before, appellant's drawing card refers to the requirement in the regulations and also has a space for referencing the serial number where corporate qualifications have previously been filed. Nothing in appellant's lengthy appeal can excuse its failure to comply with the clear regulatory requirement.

[3] Most of appellant's arguments and all the matters upon which it requests a hearing are completely irrelevant to the crucial issue here of noncompliance with the regulation. Appellant has used a shotgun approach of attacking BLM and requesting a hearing on various types of administrative and policy functions. The only matter of any relevance here which has been raised by appellant is a citation error

in the BLM decision. Although the decision correctly referred to the pertinent regulation, 43 CFR 3102.4-1, it added as a citation, "See Pan Ocean Oil Corporation, IBLA 71-112, April 12, 1971." This citation form is not correct. The number given is on the decision, but it is the number under which the appeal was docketed with this Board. This number is given at the top of the decision, but should not be used when citing a decision as precedent. The appropriate form for citing a decision of the Board of Land Appeals is by giving the name of the case, volume number of the decision, page number, and then the year of the decision. The volume and page numbers are given at the bottom of each page of the decisions. The first page of the decision is used for citation purposes. Thus, the appropriate citation should have been Pan Ocean Oil Corporation, 2 IBLA 156 (1971), and the decision could readily have been found at page 156 of Volume 2 of the Board's decisions in its looseleaf service. 1/ This citation error is harmless because the consequences of the regulation are clear.

[4] In order to apprise appellant and others concerning Board decisions used as precedents in decisions, we point out the following. The availability of decisions by this Board is governed by Departmental regulations set forth at 43 CFR 2.2. Paragraph (a)(1) and subparagraph (ii) provide that such decisions are available for

1/ Certain Board decisions are also published in the bound volumes, Decisions of the Department of the Interior (cited as I.D.). An additional citation to the volume and page numbers of the decision in the I.D.'s would also be given.

inspection and copying in the Office of Hearings and Appeals, Ballston Bldg. No. 3, 4015 Wilson Blvd., Arlington,

Virginia 22203. Paragraph (3) of the regulation refers to the Index-Digest issued by this Department wherein certain opinions, including those by the Board of Land Appeals, are covered in the Index-Digest. Pursuant to the regulation, the Index-Digest is available for use by the public at the above address and also in the Docket and Records Section, Office of the Solicitor, Interior Bldg., Washington, D.C. 20240, and in the offices of the Regional Solicitors and Field Solicitors. While the regulations do not so require it, the Index-Digest and Board decisions should also be available at most BLM offices, at least, the State Offices. They may also be found in many good law libraries. We note that the Pan Ocean Oil decision could have been readily identified from either the name of the case list or through perusal of subject headings in the Index-Digest where the correct citation is given. It also could have been identified by this Board if inquiry had been made.

Because the Board of Land Appeals decisions are indexed and made available to the public in accordance with published rules, as described above, they may be "relied on, used, or cited as precedent" by Departmental officials, including those in BLM, in accordance with the Administrative Procedure Act, 5 U.S.C. § 552(a)(2) (1976). 2/

2/ An opinion by the Assistant Solicitor, Branch of Land Appeals, prior to the creation of the Board of Land Appeals in July 1, 1970,

Therefore, while Board of Land Appeals decisions serve as binding precedents for BLM, decisions of local BLM offices are not in the same category, not being final if an appeal is taken, not being indexed and otherwise not meeting the requirements of the Administrative Procedure Act for precedential opinions.

Therefore, pursuant to the authority delegated to the Board of Land Appeals by the Secretary of the Interior, 43 CFR 4.1, the decision of the Wyoming State Office is affirmed.

Joan B. Thompson
Administrative Judge

We concur:

Edward W. Stuebing
Administrative Judge

James L. Burski
Administrative Judge

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fn. 2 (continued)
United States v. Johnson, A-30191 (Apr. 2, 1965), held that Departmental decisions which are available for public inspection pursuant to published regulations were in accord with the provisions of the Administrative Procedure Act effective at that time even though they are not included in the volumes published as Decisions of the Department of the Interior. This is true today for decisions of the Board of Land Appeals.